HIGH COURT OF CHHATTISGARH, BILASPUR

D.B: HON'BLE SHRI L.C. BHADOO, J and
HON'BLE SHRI SUNIL KUMAR SINHA, J

Criminal Appeal No.527/2003

Umend Satnami and two others

Vs.

State of Chhattisgarh through S.H.O.,
P.S. Pulgaon, Distt. Durg (C.G)

Judgment for consideration

Sd/-
SUNIL KUMAR SINHA
Judge

Hon'ble Shri Justice L.C. Bhadoo

I agree

Sd/-
L.C.BHADOO
Judge

Judge 14/10/07

Post for Judgment: 15.10.2007

Sd/-
Sunil Kumar Sinha
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

D.B: HON'BLE SHRI L.C. BHADOO, J and
HON'BLE SHRI SUNIL KUMAR SINHA, J

Criminal Appeal No.527 of 2003

APPELLANTS

1 Umend Satnami, aged 62 years, s/o Padum Satnami

2 Askaran Satnami, aged 32 years, s/o Umend Satnami

3 Chandrikabai Satnami, aged 52 years, w/o Umend Satnami

All Residents of village Sewati, P.S. Pulgaon, Distt. Durg (C.G)

Versus

Respondents State of Chhattisgarh through S.H.O., P.S. Pulgaon, Distt. Durg (C.G)

(Appeal under Section 374(2) of Cr.P.C.)

Appearance:

Shri Bhishma Kinger, counsel for the appellants.

Smt. Anju Ahuja, Dy.Govt. Advocate, for the State.

JUDGMENT

(15.10.2007)

Following judgment of the Court was delivered by

Sunil Kumar Sinha, J,

(1) Challenge is made to the judgment of conviction and order of sentence dated 25.2.2003 passed by the IV Addl. Sessions Judge, Durg, in S.T.No.197/2001 whereby all the appellants have been convicted u/s 302 read with section 34 of I.P.C. and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine, to further undergo S.I. for 3 months. Appellants No.2 & 3 have also been convicted u/s 323

of I.P.C. and sentenced to undergo simple imprisonment for 3 months with a further direction to run the sentences concurrently.

(2) The allegations are that on 18.12.2000 at about 3 p.m., all the appellants, in furtherance of their common intention, committed murder of deceased Niranjan Tank by assaulting him with spade & lathi and they also caused simple injuries to Milauram(P.W.12). The brief facts are that on the date of incident, the tractor and trolley belonging to the deceased Niranjan Tank was carrying manure to his fields. When it reached to the fields of accused persons, angle of trolley was broken, due to which, the driver and labourer unloaded the manure near the fields of accused persons and driver took the unloaded tractor to the deceased who directed that the tractor be sent for repairs, but by that time Umend, Askaran and Chandrikabai (all the appellants) and Ku. Geeta gathered near their fields and they stopped the Tractor on the way, on which Lekhram informed Niranjan Tank. When he received message he along-with his servant Milauram (P.W.12) came to the field on his Motorcycle. The accused persons said to the deceased as to why the manure was unloaded in their field, on which, the deceased replied that since there was brake down in the tractor, it was unloaded there. It is on this, accused Askaran, abusing the deceased, attacked on his head by a lathi due to which he fell down. Thereafter, accused Umend and Chandrika Bai also attacked the deceased on his head and face with Spade. When Milauram tried to intervene, he was also assaulted. He ran away and called the labourers. Looking to this, the accused persons ran away from the place of occurrence. Niranjan Tank was taken to Sector 9 Hospital where he was declared dead by the Doctors. The report of the incident was lodged in Pulgaon Police station by Milauram (P.W.12).

(3) Receiving the First Information Report Ex.P.15, the Investigating Officer left for the place of occurrence. Site Plan Ex.P.5 was prepared. *Panchnama* of the spot inspection Ex.P.6 was also prepared. The blood stained and plain soil was seized

from the place of occurrence under Ex.P.7. The clothes of accused Askaran were seized under Ex.P.12. Notices to *Panch* witnesses were given and *Panchnama* on the body of deceased was prepared under Ex.P.20. The body of the deceased was sent for postmortem examination to District Hospital, Durg, under Ex.P.2. The postmortem was conducted by Dr.S.R. Churendra (P.W.11) who prepared his report (Ex.P.13). Injured Milauram (P.W.12) was also sent for medical examination and was examined by Dr.Lal Mohammad (P.W.19), who prepared his report Ex.P.30. Another site plan was prepared by Halka Patwari under Ex.P.16. After taking the accused Umend into custody, his memorandum, Ex.P.11, was recorded. The memorandum of Chandrika Bai was recorded under Ex.P.21. Memorandum of Askaran was also recorded under Ex.P.22. In pursuance of the memorandum of Chandrika Bai, one spade was recovered under Ex.P.17. In pursuance of memorandum of Askaran one lathi was seized under Ex.P.16 and in pursuance of memorandum of Umend, another spade was seized under Ex.P.19. All the seized articles were sent for chemical examination to F.S.L., Raipur, from where report Ex.P.28 was received. According to the said report, the blood was found on all the seized articles, including weapons of the offence, except that on the plain soil. The articles were also sent for Serologist examination to Kolkota from where report Ex.P.29 was received. According to the Serologist report, articles 1, 2, 3, 4 & 5 which were clothes of the deceased were found stained with human blood and on articles 1, 2, 4 & 5, the blood was of 'B' group whereas the stains had disintegrated from articles 6, 7, 8, 9, 10 & 11 that is the weapons of offence etc., therefore, their origin and blood group could not be determined.

(4) After completion of the usual investigation, the charge sheet was filed in the Court of Judicial Magistrate First Class, Durg, who in turn committed the case to the Sessions Judge, Durg, from where it was received on transfer by IV Addl. Sessions Judge, who conducted the trial and convicted the sentenced the accused appellants, as aforementioned.

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(5) The conviction of the accused persons is based upon the testimonies of eye witnesses including the injured eye witness Milauram (P.W.12) supported by the medical evidence of Dr.S.R.Churendra (P.W.11), who conducted the postmortem on the body of the deceased.

(6) Learned counsel for the appellants argued that the eye witnesses, including the injured eye witness Milauram (P.W.12), are not reliable, therefore, the conviction based upon their testimonies cannot be sustained.

(7) On the other hand, learned State Counsel supported the judgment of conviction and order of sentence passed by the trial Court.

(8) We have heard Shri Bhishma Kinger, counsel for the appellants and Smt. Anju Ahuja, Dy. Govt. Advocate for the State.

(9) Shri Kinger has not disputed the homicidal death of the deceased. Moreover it comes in the evidence of Milauram (P.W.12) that the deceased was assaulted by accused Askaran with Lathi on his head, due to which, he fell down on the ground thereafter accused Umend assaulted the deceased with Spade on his face. His face was cut and the eye ball had come out. Thereafter, this witness was also assaulted by the accused namely Askaran and Chandrikabai with lathi. He received injuries on his head and both the arms. This ocular evidence of the injured eye-witness Milauram is supported by the medical evidence of Dr.S.R.Churendra (P.W.11), who conducted the post mortem on the body of the deceased and noticed the following injuries:

(i) One lacerated wound in size of 7cm x 3cm x brain deep, obliquely placed on the forehead from medial angle of right eye brow to left side of forehead. Brain was visible through the injury and the frontal bone of the skull was fractured.

(ii) One lacerated wound in size of 5cm x 3 cm on the left cheek just by the side of left eye. There was also fracture of left eye orbital bone.

(iii) One lacerated wound in size of 5cm x 3cm x bone deep having fracture of left margin of left eye orbit.

(iv) One Lacerated wound in size of 5cm x 3cm x bone deep having fracture of mandible and chin bone.

(v) Fracture of Nasal bone.

(vi) One lacerated wound in size of 3cm x 2cm x 1cm on the left side of skull.

(vii) One lacerated wound in size of 2cm x 2cm x 1/2cm on the left side of scalp.

All the injuries were antemortem in nature. In his opinion, the cause of death was Coma due to head injury and it was homicidal in nature. Therefore, on the basis of above ocular and medical evidence, it is established that the death of the deceased was homicidal in nature.

(10) Regarding the complicity of the accused persons in crime in question, P.W.4 Kartik Ram has stated that at the relevant time, he was working as driver in the Tractor of the deceased. On the fateful day, at about 4-5 a.m., he had taken the tractor to Durg, for unloading Papaya. He was accompanied by Lekhram and Nand Kumar. After unloading Papaya, they all returned back to Kosanala where they loaded manure in the Tractor and started for going to *Badi*. As soon as they reached near the Kacha Road of village Sevti, the angel of tractor trolley was broken on the way, they stopped the tractor and sent Nand Kumar to call the owner. Niranjan Tank came from *Badi* to the place where the tractor was there. He said that for the time being they should unload the manure there and when the trolley is repaired, it shall be taken on tomorrow. On these instructions, they unloaded the manure at the said place and started taking the trolley towards *Badi*, at that time accused Askaran and his mother came to the field and they abused them. Thereafter, he alongwith Lekhram started from Badi. On the way they saw that all the accused persons namely Umend, his wife Chandrika, his son and daughter were spreading the manure in their field. Umend was armed with Spade, Chandrika and Askaran were armed with Danda. They were

stopped by the accused persons. The accused said them for calling the deceased. He sent Lekhram to call the deceased. The deceased came there on Motorcycle along-with Milauram (P.W.12). As soon as the deceased came there, wife of Umend, Chandrika started abusing him on which the deceased said not to abuse and thereafter Askaran attacked the deceased on his head by Lathi, due to which, the deceased fell down. As soon as he fell down, the accused Umend attacked on his head by spade. On this Milauram said him to run away and he ran away from that place. Milauram went to the wife of deceased and told her the story. Thereafter again all these persons came to the spot alongwith the wife of the deceased. They saw the dead body. The face of the deceased was badly damaged and it was disfigured.

(11) Milauram (P.W.12) has stated that on the fateful day, when he reached to the place of occurrence along-with the deceased on Motorcycle, they saw that all the accused persons were there. The deceased asked to the accused persons that why they have stopped the tractor, they will take the manure afterwards. On this the accused Askaran attacked on his head with lathi, due to which, the deceased fell down on the ground. Thereafter, accused Umend attacked the deceased by a spade on his face. He cut the face of the deceased. Eyeball of the deceased had come out. Thereafter, Chandrika Bai and Askaran assaulted him with lathi due to which he also received injury on his head and on both the arms.

(12) Though these witnesses have been put to lengthy cross examinations, but the defence has not been able to elicit any such circumstance on which it can be said that either these persons have not witnessed the occurrence or they are making unreliable version pertaining to the occurrence. The presence of these witnesses cannot be doubted because Kartik Ram (P.W.4) who was the driver of the tractor, was bound to be there because he had taken the tractor by driving it to the place of occurrence. He appears to be a natural witness. Like wise (P.W.12) Milauram is also a natural witness because he was working with the deceased and it is stated that he accompanied the deceased on

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his motorcycle to the place of occurrence for pacifying the situation and for releasing the tractor which was detained by the accused persons on account of unloading of manure near their fields. More over, it has not come on record that these witnesses were inimical to the accused persons or they were interested in falsely implicating the accused persons. Their versions are natural and their conducts are also natural on which neither their presence nor their evidence can be doubted. More over, P.W.12 Milauram is an injured witness. His injuries were examined by Dr.Lal Mohammad (P.W.19). Dr.Lal Mohmmad has deposed that on 18.12.2000 he was working in the District Hospital, Durg and has examined injured Milauram. He noticed one lacerated wound in size of 4 x ¼ x ¼ cm on the right parietal region. He also noticed a contusion in size of 3 x 2cm on the left and right arm below the elbow. According to him, both the injuries were simple in nature and were caused by hard and rough object. He has also advised the injured for admission and has proved his report as Ex.P.30. As far as the law in regard to injured witness is concerned, it is well settled that if a witness has received injury in the same incident, atleast his presence on the place of occurrence cannot be doubted and if the version of the said witness appears to be true on the touch stone of appreciation that is to say that it is cogent, reliable and fully trustworthy, the conviction can be based upon the evidence of such witness.

(13) After careful appreciation of evidence of these two witnesses i.e., Kartikram (P.W.4) and Milauram(P.W.12), we are of the considered opinion that they are the true witnesses and the conviction can be based upon the testimonies of these witnesses.

(14) Shri Kinger has also argued that it has not been established that the accused persons have shared their common intention, therefore, every one would be responsible for his own act. He also argued that if the individual act of each accused/appellant is analyzed, there is no evidence on record to show that the accused/appellant Chandrika Bai has assaulted the deceased, therefore, her conviction u/s 302 with the aid of

(29)

section 34 I.P.C. cannot be sustained. As far as the other two accused/appellants Umend and Askaran are concerned, he has argued that according to the acts attributed to them, their case would not travel beyond section 304(part-II) of I.P.C.

(15) Section 34 of I.P.C. has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it prearranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true contents of the section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision. ***Please see Anil Sharma and others –Vs- State of Jharkhand (2004) 5 SCC 679***. The Apex Court further clarified that in 1870, Section 34 was amended by insertion of the words "in furtherance of the common intention of all" after the word "persons" and before the word "each", so as to make the object of section 34 clear. The section does not say "the common

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intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under section 302 read with section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them.

(16) It was further held by the Apex court in the matter of ***Dani Singh –Vs- State of Bihar, 2005 SCC (Cri) 127 (para 20)*** that to constitute common intention, it is necessary that intention of each one of the accused be known to the rest and shared by them. Undoubtedly, it is difficult to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In most cases, it has to be inferred from the act, conduct or other relevant circumstances of the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view the facts involved. Whether an act is in furtherance of the common intention is an incident of fact and not of law.

(17) Therefore, it is clear that only due presence of a person at the scene of occurrence, particularly, when he or she is family member of other accused persons, his or her common intention cannot be gathered if other family members, at the spur of the

moment, shared their common intention to commit the crime in which there appears to be no evidence of sharing against that person.

(18) In light of the above principles, we have carefully considered the arguments advanced by Shri Kinger. Certainly, there does not appear to be evidence of common intention from the beginning, as the case of prosecution is that all the family members of the accused i.e., husband, wife, son and the daughter were present at the place of occurrence and they were spreading manure in the field with the help of spade and as soon as the deceased came there, two male members of the family i.e., appellants No.1 & 2, all of a sudden, assaulted the deceased with Lathi and Spade. It is established by the prosecution that appellant Askaran had given a fatal blow on the head of the deceased with lathi, due to which, he fell down, thereafter appellant Umend assaulted the deceased with spade on his face causing many injuries which proved to be fatal. Therefore, only these two appellants have participated in assault of the deceased and in fact only they shared a common intention, at the spur of moment, and nothing can be attributed to appellant no.3 Chandrika Bai. In these facts and circumstances, after considering the entire evidence on record, in absence of any evidence of sharing of common intention by appellant no.3 Chandrika Bai, she cannot be convicted for commission of the offence of murder of the deceased with the aid of section 34 of I.P.C. and her such conviction deserves to be set aside.

(19) So far as appellants no.1 and 2 are concerned, there is evidence that they have given repeated blows to the deceased. The first blow was given by Askaran with lathi on his head, due to which, the deceased fell down and when the deceased fell down, repeated blows were given by appellant Umend with the spade and the deceased received as many as 7 injuries and he died spontaneously. The head injury was in size of 7cm x 3cm x brain deep and the brain was visible through the injury and there was also a fracture of skull bone by the injury caused by Umend with spade. Even the eyeball of the deceased had come out as

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stated by the eye witness and the evidence of their intention to commit the murder of the deceased was writ large on record, therefore, the arguments of Shri Kinger that their act shall not travel beyond section 304(Part-ii) I.P.C. cannot be sustained in the facts and circumstances of the case and the same has to be rejected.

(20) In the result, the appeal partly succeeds. The conviction and sentence of the appellant No.3 Chandrika Bai u/s 302/34 I.P.C. are set aside. She is acquitted of the said charges. However, her conviction and sentence u/s 323 I.P.C. are maintained.

(21) The appeal of two other appellants namely Umend and Askaran is dismissed. Their conviction and sentence awarded by the trial Court are maintained.

Sd/-
L.C.BHADOO
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

Rao